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IN THE

Supreme Court of the United States

October Term 1966

No. 679

DARWIN CHARLES BROWN,

Petitioner,

v.

JOHN W. FOLLIN, Auditor of the U. S. District Court for the District of Columbia, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DARWIN CHARLES BROWN

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Petitioner

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on April 29, 1966 and the order dated June 16, 1966 denying petitioner's petition for rehearing *en banc*.

CITATIONS TO OPINIONS BELOW

The three memorandum reports of the Auditor of the District Court for the District of Columbia are unreported and are printed respectively on pages 1-24, 42-51, and 83-102, inclusive of the appendix records used on appeal in the court below. The memorandum of Judge Alexander Holtzoff of the U. S. District Court for the District of Columbia is also unreported, and appears on pages 31-34 inclusive of the appendix record from below.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 29, 1966 (R 252). Rehearing *en banc* was denied on June 16, 1966 (R 253). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether the U. S. District Court for the District of Columbia which by virtue of a statute enacted by the U. S. Congress has jurisdiction over the expenditure by conservators of funds belonging to the estates of adult wards, may extend its jurisdiction to cover the expenditure of funds not belonging to the estate of the adult ward.

STATUTE INVOLVED

The statutory provision involved is section 503 of Title 21 of the District of Columbia Code (Oct. 24, 1951, 65 Stat. 608, ch. 545 § 3) entitled "Powers and Duties of Conservator." It is printed in R 22.

STATEMENT

The proceeding below in this case commenced with the filing of a petition for the Appointment of a Conservator filed on March 18, 1953 in the United States District Court for the District of Columbia by Simone Fleisher Washington. Said petition prayed for the appointment of Petitioner, Darwin Charles Brown as the Conservator of the Estate of Simone Fleisher Washington (R 2). Mr. Brown, a partner in the law firm of Ginsburg, Leventhal and Brown had been asked by the family of Mrs. Washington to assume this responsibility.

Court Order of March 19, 1953 set the matter down on April 2, 1953 for hearing on the appointment of a conservator and appointed Brainard H. Warner III, as guardian ad litem to represent said Simone Fleisher Washington in the proceedings. Subsequent orders continued the matter of the appointment of a conservator until April 27, 1953 (R 3).

On April 24, 1953, a petition was filed for appointment of Phyllis Washington de Mohrenscheidt as Conservator. A hearing was held before the Court below on April 27, 1953.

By Court order dated April 29, 1953, Petitioner was appointed Conservator for Simone Fleisher Washington (R 3). Her estate was estimated to consist of personal property having a value of $10,000.00 and in addition thereto income in the total annual amount of $3,500.00 from certain trusts with the Provident Trust Company of Philadelphia, Pennsylvania (R 2).

The Order of Appointment also provided that Petitioner furnish an undertaking for the faithful performance of his duties as Conservator in the amount of $10,000.00. Subsequent Order of the Court below ordered that the undertaking be increased by $4,000.00

in order to reflect the Ward's annual income as well as her personal property (R 4).

No increase in the total undertaking was ever ordered after Petitioner assumed his duties as agent for the Ward's aunts in the administration of the funds they supplied to Petitioner. The Court has been on notice of these facts since 1954.

Each of the first eight annual reports filed by the Petitioner Brown was duly approved. The ninth annual report was filed with the Auditor on July 20, 1962. The tenth and final annual report was filed on April 11, 1963. On February 25, 1964, in order to more accurately reflect the state of the accounts for which Petitioner was obligated to report, Petitioner filed the Restated Ninth and Tenth and final annual reports, wherein he restricted himself to accounting for property belonging to the estate of the Ward (R 35-41).

Petitioner was removed as Conservator by the District Court upon motion of the Auditor and without a hearing on February 6, 1963.

In all, the Auditor has prepared and filed three lengthy reports. The first two were entitled respectively, "Report of the Auditor" (R 1-25), and "Supplemental Report of the Auditor" (R 42-51). Following each of the above named reports, objections thereto were filed by the Petitioner Brown (June 24, 1963 with Exhibits, R 26-30 and March 13, 1964, R 52-53).

On June 2, 1964, Judge Walsh entered an Order (R 66) directing Petitioner to account to the Auditor not only for assets of the Ward's Estate, but also for assets belonging to and spent under the direction of members of the Ward's family.

Petitioner filed Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit from said Order, and the case was duly docketed as Appeal No. 18,810 September Term 1964.

The Court of Appeals found the Appeal to have been premature, and entered Judgment dated April 16, 1965 (R 139) dismissing the appeal as "not presently within the jurisdiction of this Court."

During the pendency of the afore-mentioned Appeal, the Auditor issued a further lengthy report entitled "Second Supplemental Report of the Auditor" (R 83-102). Detailed objections thereto were filed by Petitioner (R 110-137) and by the Travelers Indemnity Company (R 103-105), and on July 21, 1965 the District Court entered judgments denying the Objections timely filed by the Petitioner and ratifying instead the said Report, and awarding judgments against the Petitioner and Travelers Indemnity Company in the amount of Eight Thousand Eighteen and 64/100 Dollars ($8,018.64) in favor of Brainard H. Warner III, Temporary Conservator of the Estate of Simone Fleisher Washington, Adult Ward and in the amount of One Thousand Six Hundred Fifty ($1,650.00) Dollars in favor of John W. Follin, Auditor of the District Court. The Petitioner and Travelers timely filed Motions for Reconsideration and Rehearing of said Judgment (R 145-147, 147-149). The Motions were denied by the Court below without a hearing by Order dated September 16, 1965 (R 151) and Notice of Appeal was filed on the 18th day of October 1965 (R 251).

The Appeal was duly heard, and the Court of Appeals affirmed the Judgment of the District Court by Judgment entered April 29, 1966 (R 252). Rehearing *en banc* was denied June 16, 1966 (R 253).

On September 9, 1966 Petitioner filed in this Court an Application for Extension of Time in which to File Petition for Writ of Certiorari until and including November 14, 1966. On September 12, 1966, Chief Justice Warren granted an extension of time to and including October 14, 1966.

REASONS FOR GRANTING THE WRIT

1. The apparent statutory basis for the assertion of jurisdiction in this matter by the Courts below was Title 21, Section 503 of the District of Columbia Code of 1961 entitled Powers and Duties of Conservators (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 3).

The foregoing provision, the text of which is reproduced at R 22, provides in essence that conservators shall account of the District Court for expenditures of funds belonging to the *estate* of the ward.

In this case, the record shows that the Petitioner administered two distinct types of assets. One type was the Ward's estate dating from the inception of the conservatorship by Court order, for which Petitioner has fully accounted to the Court below and to its Auditor by the restated ninth and tenth and final annual reports filed February 25, 1965 (R 35-41).

Other assets administered by Petitioner did not belong to the Ward or to her estate, but were the property of members of the Ward's family. The latter assets were transferred to Petitioner in his individual capacity as the agent of the family, to be expended on behalf of the Ward in the sole discretion of Petitioner acting as the agent of the family, and under the family's control. The contribution of the latter assets was commenced *after* the inception of the conservatorship, continued throughout the conservatorship, and has continued uninterruptedly since the removal of Petitioner as Conservator.

Petitioner, as conservator, made a full accounting to the Auditor for the District Court for all funds belonging to the estate, thus fully complying with the statute (R 35-41). Nevertheless, the Auditor has insisted upon, and the courts below have acquiesced, in the extension of their jurisdiction over private, non-estate funds demonstrably belonging to others, which

were voluntarily placed in Petitioner's hands as agent of such persons. Thus, the primary issue, which in this case requires of this Court the exercise of its supervisory judgment over the courts below, is whether the courts below may extend their jurisdiction to subject matter beyond the statutory boundaries set by the Congress of the United States in enacting Section 503 of Title 21, D.C. Code (Oct. 24, 1951, 65 Stat. 608, Ch. 545 § 3).

2. The record below is not legally sufficient to support the actions of the courts below in extending their jurisdiction beyond the boundaries of the applicable statute. Indeed, it is clear from the record that the persons who were the owners of the funds in question over which the courts below have imposed their jurisdiction adamantly opposed that any Court or public official, or any other person should have any responsibility, direction or supervision of the expenditure of any funds furnished by them, or either of them, to the Petitioner. They have stated for the record and under oath:

> "It was never our intention and it is not now the intention of either of us that any Court or public official or any other person should have any responsibility, direction or supervision of the expenditures of any funds furnished by us, or either of us, as to how, where or when the funds so furnished to Mr. Brown were expended or to be expended." (R 30).

3. The decisions of the courts below in this case appear to be in fundamental conflict with certain prior decisions of the United States Court of Appeals for the District of Columbia Circuit insofar as the required donative intent to pass title is concerned. Thus, in *Murray v. Gadsden et al.*, 91 U.S. App. D.C. 38 (1952), the court stated, quoting in part its earlier opinion in *Harrington v. Emmerman*, 88 U.S. App. D.C. 23, 27, 86 F.2d 757, 761:

"There can be no gift if the alleged donor did not intend to make one and for her own convenience and without intent to give defendant a present interest . . .

"*In this case, Mrs. Gadsen's testimony shows Mrs. Murray's retention of dominance over the accounts.*" (Italics supplied)

In this case, the owners of the funds have expressed their intention to retain dominance over funds voluntarily supplied by them as follows:

"This money was given to Mr. Brown by us for such specific purposes as he saw fit, in consultation with us" (R 29).

"We have gone over his travel accounts and considering the time and effort he spent on Mrs. Washington's behalf, we consider them fully justified. The trips were made at our request, each time to meet a medical crisis *and were paid for by the family's money*" (R 29). (Italics supplied)

The owners of the funds are further on record as stating:

". . . We think that any attempt to question the spending of these funds is solely a private matter between Mr. Brown and the donors and do not properly come under Court jurisdiction" (R 29).

The above quoted expressions of intention clearly show that the funds in question did not become part of the "estate" because the owners did not so intend, but instead retained dominance thereover. A consistent application of the *Gadsden* doctrine would have required the courts below to give full effect to the intentions thus expressed. Such was not the case, however.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

DARWIN CHARLES BROWN

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Petitioner

October 14, 1966

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed April 29, 1966]
No. 19,806 September Term, 1965
Civil Action 1220-53

Darwin Charles Brown, et al.,
Appellants,

v.

John W. Follin, Auditor,
U.S. District Court, et al.,
Appellees.

Appeal from the United States District Court for the District of Columbia.

Before: Edgerton, Senior Circuit Judge, and Burger and McGowan, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment and order of the District Court appealed from in this cause be, and they are hereby, affirmed.

It is further ORDERED by the Court that appellees herein recover from appellants their taxable costs on this appeal, and have execution therefor.

Per Curiam

[Filed June 16, 1966]

Before: Bazelon, Chief Judge; and Fahy, Danaher, Burger, Wright, McGowan, Tamm, and Leventhal, Circuit Judges, in Chambers.

ORDER

On consideration of appellant's petition for rehearing *en banc*, it is

ORDERED by the Court *en banc* that appellant's aforesaid petition is denied.

Per Curiam

Circuit Judge Leventhal did not participate in the foregoing matter.